

DRAFT

CALIFORNIA CODE OF REGULATIONS TITLE 23. WATERS

DIVISION 3. STATE WATER RESOURCES CONTROL BOARD CHAPTER 18. PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUND

ARTICLE 7. ORPHAN SITE CLEANUP ACCOUNT

2815. Definitions

Unless the context clearly requires otherwise, the terms used in this article shall have the following meanings:

“Affiliates”

(a) Affiliates means persons who have one or more of the following relationships with each other:

- (1) Familial relationship.
- (2) Fiduciary relationship.
- (3) A relationship of direct or indirect control or shared interests.

(b) Affiliates include, but are not limited to, any of the following:

- (1) Parent corporation and subsidiary.
- (2) Subsidiaries that are owned by the same parent corporation.
- (3) Business entities involved in a reorganization, as defined in section 181 of the Corporations Code.
- (4) Corporate officer and corporation.
- (5) Shareholder that owns a controlling block of voting stock and the corporation.
- (6) Partner and the partnership.
- (7) Member and a limited liability company.
- (8) Franchiser and franchisee.

DRAFT

- (9) Settlor, trustee, and beneficiary of a trust.
- (10) Debtor and bankruptcy trustee or debtor-in-possession.
- (11) Principal and agent.

“Applicant” means a person who files an application to the OSCA.

“Causes or contributes to an unauthorized release” means any of the following:

- (a) Operate the underground storage tank.
- (b) Own the underground storage tank from which the unauthorized release originated unless:
 - (1) The unauthorized release began before the applicant became the owner of the underground storage tank, and the applicant properly removed, closed or permitted the underground storage tank within a reasonable period of time, not to exceed one year, from when the applicant became the owner of the underground storage tank; or
 - (2) The applicant acquired real property on which an underground storage tank is situated and, despite the exercise of reasonable diligence, was unaware of the existence of the underground storage tank when the real property was acquired, the applicant properly removed, closed or permitted the underground storage tank within a reasonable period of time, not to exceed one year, from when the applicant should have become aware of the existence of the underground storage tank, and the unauthorized release began before the applicant closed or permitted the underground storage tank.
- (c) Exacerbate the effects of the unauthorized release.

“Census Designated Place” means a place designated as a census designated place by the United States Bureau of the Census.

“Economic activity” means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

“Eligible site” means a site that meets all of the following requirements:

- (a) Petroleum contamination is the principal source of contamination at the site.
- (b) The source of the petroleum contamination is an underground storage tank.
- (c) The site meets all of the following requirements:
 - (1) The site is located in an urban area.

DRAFT

- (2) The site was previously the site of an economic activity that is no longer in operation at that location.
- (3) The site has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application pursuant to this article.
- (d) The site is not listed, or proposed for listing, on the National Priorities List pursuant to section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq.).
- (e) The site is not and was not owned or operated by a department, agency, or instrumentality of the United States.
- (f) The site will not be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the site meets the requirements of subdivision (c) and is the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:
 - (1) A small business.
 - (2) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).
 - (3) A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.

"Familial relationship" means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

"Independent Consultant and Contractor" means a consultant or contractor that meets the following requirements:

- (a) The consultant or contractor is not an employee of, general or limited partner or a shareholder in, or does not have any other ownership or management interest in the applicant, an identified responsible party, or a prospective buyer of the eligible site;
- (b) Within twelve months before the application is submitted to the OSCA, the consultant or contractor does not receive any source of income from the applicant, an identified responsible party, or a prospective buyer of the eligible site, other than the payment of fees

DRAFT

for professional services unless the consultant or contractor is acting in his or her capacity as an employee of a governmental entity.

“Infill Development” means development or redevelopment of vacant or underutilized properties within established urban communities, where those communities are already served with streets, water, sewer and other public services.

“No Longer in Operation” means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

“Operation and Maintenance” means activities initiated or continued at a site following completion of a response action that are deemed necessary by a regulatory agency to protect public health or safety or the environment, to maintain the effectiveness of the response action at the site, or to achieve or maintain the response action standards and objectives established by the final remedial action plan or final removal action workplan applicable to the site.

“OSCA” means the Orphan Site Cleanup Subaccount created pursuant to section 25299.50.2 of the Health and Safety Code.

“Performance-based contract” means a written agreement between an applicant and an appropriately licensed contractor, where the contractor agrees for a fixed price to take response actions to reduce the concentrations of designated constituents of concern to specified concentrations.

“Person” means an individual, trust, firm, joint stock company, corporation, or other entity, including a government corporation, partnership, limited liability company, or association. The term includes a public agency.

“Project” means any response action and the planned future development of the eligible site.

“Public agency” means any county, city and county, city, regional agency, public district, or other political subdivision and includes a redevelopment agency. The term does not include the state or any agency or department thereof, or the federal government.

“Remediation milestone” means that a specified reduction in the concentrations of constituents of concern from baseline concentrations has been attained through response actions. The reduction is expressed as a percentage of the total reduction required by the performance-based contract.

“Remedy” or “Remedial Action” means those actions consistent with a permanent remedy that are taken instead of, or in addition to, removal actions in the event of an unauthorized release or threatened release of petroleum into the environment, as further defined by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.). The term includes actions that are necessary to monitor,

DRAFT

assess, and evaluate an unauthorized release or a threatened unauthorized release and site operation and maintenance.

“Remove” or “Removal” means the cleanup or removal of an unauthorized release from the environment or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage that may otherwise result from an unauthorized release or a threatened unauthorized release, as further defined by section 101(23) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.).

“Response Actions” means removal actions and remedial actions, and includes corrective action as defined in section 25299.14 of the Health and Safety Code.

(a) Costs of response actions also include:

- (1) Professional fees and costs that are directly related to removal actions and remedial actions.
- (2) Costs of supervision by an applicant of response actions.
- (3) Costs of underground storage tank removal if there is an unauthorized release or threat of unauthorized release.

(b) Costs of response actions exclude, among other costs:

- (1) Costs of environmental audits or pre-purchase site investigations, unless performed in response to an unauthorized release or threatened unauthorized release.
- (2) Economic losses and damages, including but not limited to damages for lost business and diminution in property value.

“Responsible Party” means a responsible party as defined in Title 23 of the California Code of Regulations, Chapter 16, section 2720.

“Small business” means:

- (a) An independently owned and operated business, that is not dominant in its field of operation, that, together with its affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years; or
- (b) A business that is a manufacturer with 100 or fewer employees. A manufacturer is a business that is:

DRAFT

- (1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and
- (2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. The SIC Manual is accessible at the following website maintained by the California Department of General Services:
<http://www.pd.dgs.ca.gov/smbus/default.htm>

“Urban area” means the central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25281, 25296.10, 25299.11, 25299.25, 25299.50.2, 25318.5, 25322, 25323, 25323.3, 25395.20(a)(2)(A) and (B), 25395.20(a)(5), 25395.20(a)(6)(C), 25395.20(a)(12), 25395.20(a)(15), and 25396.20(a)(19), Health and Safety Code, 42 USC 9601, sections (23) -(25), In re: Combustion, Inc., (W.D. La. 1996) 968 F. Supp. 1112; Nutrasweet Co. v. X-L Engineering Corp. (N.D.Ill 1996) 926 F. Supp. 767; T&E Industries, Inc. v. Safety Light Corp. (1988) 680 F.Supp. 696; United States v. 150 Acres of Land (2000) 204 F.3d 698; Pennsylvania Urban Development Corporation v. Golen (1989) 708 F.Supp. 669; Amland Properties Corp. v. Aluminum Company of America (1989) 711 F.Supp. 784; Artesian Water Company v. New Castle County (1987) 659 F. Supp. 1269, Wehner v. Syntex Corporation (1987) 681 F. Supp. 651

2816. Other Definitions

Unless the context clearly requires otherwise, any term used in this article that is not defined in section 2815 has the same meaning as defined in section 2804.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25299.11.5 –25299.24, 25299.50.2, Health and Safety Code

2817. Types of Grants

- (a) An applicant may apply for an assessment grant, cleanup grant, or both from the OSCA.
- (b) Assessment grants provide funding for response actions that characterize, assess, and investigate an unauthorized release from an underground storage tank. These actions include, but are not limited to, a preliminary site assessment and soil and water investigation and the preparation of a corrective action plan in accordance with California Code of Regulations, title 23, chapter 16, article 11. Assessment grants may also provide funding for underground storage tank removal, free product removal and soil excavation, not to exceed 500 cubic yards at the eligible site.
- (c) Cleanup grants provide funding for response actions that carry out cleanup activities and include, but are not limited to, implementing a corrective action plan and verification monitoring, in accordance with California Code of Regulations, title 23, chapter 16, article 11. The Board shall not award a cleanup grant to an applicant until the applicant

DRAFT

demonstrates the corrective action plan is complete and approved by the regulatory agency overseeing the response actions at the eligible site.

Authority: Section 25299.77, Health and Safety Code

Reference: Sections 25296.10, 25299.50.2, 25322, 25323, and 25323.3, Health and Safety Code

2818. Eligible Applicants

A person may apply to the OSCA for a grant to pay for costs of response actions that relate to an unauthorized release from an underground storage tank at an eligible site if all of the following conditions are met:

- (a) The applicant did not cause or contribute to the unauthorized release from the underground storage tank.
- (b) The applicant and any person who caused or contributed to the unauthorized release from the underground storage tank are not affiliates.
- (c) The applicant does not meet the eligibility criteria contained in sections 25299.54 and 25299.57 of the Health and Safety Code.
- (d) The applicant owns the eligible site or otherwise has authority to access and perform response actions at the eligible site.

Authority: Section 25299.77, Health and Safety Code

Reference: Section 25299.50.2, Health and Safety Code

2819. Eligibility Requirements

- (a) An applicant may receive a grant from the OSCA for reasonable and necessary costs of response actions that relate to an unauthorized release from an underground storage tank at an eligible site if a financially responsible party, other than the applicant if the applicant is a responsible party, has not been identified to pay for response actions to remediate the harm caused by the unauthorized release. When determining if a responsible party is financially able to pay for response actions to remediate the harm caused by the unauthorized release from an underground storage tank, the Board shall consider the following factors:

- (1) The estimated cost of response actions to remediate the harm caused by the unauthorized release. If the applicant does not provide a reasonable cost estimate, the Board shall consider the cost of response actions at sites involving a similar unauthorized release from an underground storage tank.
 - (2) The responsible party's income and assets.

DRAFT

- (3) The responsible party's insurance coverage for response actions to remediate the harm caused by the unauthorized release from the underground storage tank.
 - (4) Other financial assistance available to the responsible party for response actions to remediate the harm caused by the unauthorized release from the underground storage tank.
- (b) The applicant shall make reasonable efforts to obtain the information specified in subdivisions (a)(1) through (4).

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2820. Grant Conditions and Limitations

- (a) The Board may pay from the OSCA reasonable and necessary costs of response actions that relate to an unauthorized release from an underground storage tank at an eligible site if all of the following conditions are met:
- (1) The costs of response actions are incurred on or after January 1, 2005, and are incurred by or on behalf of the applicant.
 - (2) The regulatory agency responsible for overseeing response actions at the eligible site directs corrective action pursuant to Health and Safety Code, section 25296.10.
 - (3) The response actions are necessary to protect human health, safety and the environment, and are performed in accordance with Health and Safety Code, division 20, chapter 6.7 and California Code of Regulations, title 23, division 3, chapter 16, and Water Code, division 7.
 - (4) For sites where the Board, the regional board, or local agency has determined that an unauthorized release has impacted groundwater, the response actions that carry out cleanup activities as described in section 2817, subdivision (c) and the bidding process for these activities are conducted in accordance with Article 6.5 of Chapter 6.75 of the Health and Safety Code, unless the Board finds that compliance with Article 6.5 of Chapter 6.75 of the Health and Safety Code is unreasonable or impossible under the circumstances pertaining to a particular application.
- (b) In addition to the conditions contained in subdivision (a), the following conditions apply:

DRAFT

- (1) To receive an assessment grant, the applicant must demonstrate that the applicant has provided to the Board and the regulatory agency overseeing the response actions a copy of all site assessments and investigation reports, workplans and corrective action plans for the eligible site that are available to the applicant.
 - (2) To receive payment pursuant to a cleanup grant, the applicant must demonstrate that the applicant is the fee title owner of the eligible site, unless the applicant is a public agency.
- (c) The Board may not issue grants from the OSCA for more than \$1,500,000 per occurrence.
- (d) The Board shall not award more than \$3,000,000 pursuant to this article to an applicant in any fiscal year. For purposes of determining the total amount awarded to an applicant for purposes of this subdivision, the Board shall include any award of funds made to an applicant's affiliates. The Board may waive this limitation if doing so would provide for an equitable and timely use of available funds.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2821. Double Payment

An applicant may not receive payment from the OSCA for response actions that have been or will be paid or otherwise compensated from another source. For purposes of this article, a reduction in the applicant's cost to acquire an eligible site shall not be considered compensation from another source. If an applicant has or will receive compensation for costs of response actions from another source, the Board shall apply section 2812.3 of article 4 to determine the amount of double payment, if any. However, any reference in section 2812.3 of Article 4 to the claimant, the Fund, and corrective action shall, for the purposes of this article, be deemed a reference to the applicant, the OSCA, and response actions, respectively.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2822. Priority Ranking

- (a) Except as provided in subdivision (b), the priority of applications under this article shall be based on the date on which the board receives an application. Applications received within the first forty-five (45) calendar days after the effective date of this article will be ranked as if received on the same date. These applications will be randomly ranked to determine the order of priority. Applications that are received after forty-five (45) calendar days after the effective date of this article will be ranked according to the date they are received. Applications received on the same day will be randomly ranked.

DRAFT

- (b) If the Board determines that sufficient funding to meet the demand for OSCA grants will not be available in a given fiscal year, the Board shall calculate a priority score to rank each application using scales developed by the Board that measure the following factors:
 - (1) Forty (40) percent of the priority score is based on whether the unauthorized release is located within 1,000 feet of a drinking water well or a surface water body used as a source of drinking water.
 - (2) Thirty (30) percent of the priority score is based on whether the site is located in a community with median household income of less than 80% of the statewide median household income based on the most recent census data available for cities or Census Designated Places. If no city or Census Designated Place level data are available, then smaller areas will be used, such as census tract or tracts.
 - (3) Thirty (30) percent of the priority score is based on the potential for the project to result in development of affordable inner city housing or otherwise promote infill development.
- (c) The priority of applications that receive the same total priority score pursuant to subdivision (b) shall be based upon the date the application to the OSCA is received by the Board.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2823. OSCA Application Requirements

An OSCA application for payment of costs of response actions shall contain the following:

- (a) The name of the applicant, the type of entity of the applicant, a correspondence address, telephone number or numbers where the applicant can be contacted during normal business hours, and a federal tax identification number or social security number;
- (b) If a joint application is submitted by multiple applicants, the name, correspondence address, telephone number or numbers, tax identification number or social security number of each applicant;
- (c) The site address or a description of the site where the underground storage tank(s) that is the subject of the application is located;
- (d) A site map drawn to scale that includes a north arrow and distances relative to the nearest public roads and which identifies locations of all underground storage tanks and all other known or potential sources of contamination;
- (e) The capacity of the underground storage tanks(s), the substances that have been stored therein and the dates the underground storage tank(s) were removed;

DRAFT

- (f) A listing of all other known or potential on or off-site sources of contamination;
- (g) Name of the lead oversight regulatory agency, case identification number, and contact person and telephone number and the date the regulatory agency confirmed contamination from an on-site underground storage tank(s);
- (h) A description of the unauthorized release, including whether the unauthorized release has impacted, or is likely to impact, groundwater;
- (i) A brief description of the response actions undertaken at the site;
- (j) Information that demonstrates that the site is an eligible site, including:
 - (1) Information that demonstrates that the petroleum contamination is the principal source of contamination at the site and that the source of petroleum contamination is an underground storage tank;
 - (2) Information that demonstrates that the site is located in an urban area and that the site was previously the site of economic activity that is no longer in operation at that location;
 - (3) Description of existing and historical uses of the site;
 - (4) A statement that demonstrates that the site is not listed or proposed for listing on the National Priorities List and that the site is not or was not owned or operated by a department, agency or instrumentality of the United States;
 - (5) For applications involving a contiguous expansion of an operating industrial or commercial facility, information that demonstrates the facility is owned or operated by a small business, a small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code, or a nonprofit corporation formed under Part 2 or Part 4 of Division 2 of Title 1 of the Corporations Code;
- (k) Information that demonstrates that the applicant is an eligible applicant, including:
 - (1) The identity of current and former owners and operators of the underground storage tank that is the subject of the application;

DRAFT

- (2) If the applicant is the owner of the underground storage tank that is the subject of the application, the date the applicant became the owner and a description of the actions that the applicant undertook to remove, close or permit the underground storage tank;
 - (3) Information regarding any affiliation that the applicant has with any current or former owner or operator of the underground storage tank;
 - (4) Explanation of reason why the applicant does not satisfy eligibility criteria contained in sections 25299.54 and 25299.57 of the Health and Safety Code;
 - (5) Documentation of the applicant's legal interest in the eligible site and the applicant's authority to access the eligible site and perform response actions at the eligible site.
- (l) Information that indicates whether a financially responsible party, other than the applicant if the applicant is a responsible party, has been identified to pay for response actions at the site, including:
- (1) The identity of responsible parties for the unauthorized release that is the subject of the application and a description of the activities undertaken by the applicant to identify responsible parties;
 - (2) Estimated cost of response actions to remediate the harm caused by the unauthorized release; and
 - (3) For responsible parties that are identified, information relating to the responsible party's ability to pay for response actions, including the responsible party's income, assets, insurance coverage and other financial assistance that is available to pay for response actions.
- (m) Information that will assist the Board in determining the priority ranking of an application, including:
- (1) The identification of drinking water wells or surface water bodies used as sources of drinking water within 1,000 feet of the unauthorized release.
 - (2) The most recent census data that indicate whether the site is located in a community with median household income of less than 80% of the statewide median household income.
 - (3) An explanation of the planned future development of the eligible site, including how the future development will result in the development of affordable inner city housing or otherwise promote infill development.

DRAFT

- (n) A certification that all costs of response actions claimed were incurred for work performed on or after January 1, 2005;
- (o) A certification that the site is an eligible site, the applicant is an eligible applicant and that all applicable eligibility requirements are met;
- (p) A copy of any agreement entered into by the applicant where a person agrees to incur costs on behalf of the applicant.
- (q) Any other information or supporting documentation reasonably required by the Board to determine the eligibility or priority of the application or the amount that may be paid pursuant to a grant.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2824. Priority List

- (a) Within 60 days of receipt of a complete application, the Board will conduct a review of the application to determine if the application is eligible. If the application is eligible, the Board shall issue to the applicant a notice of eligibility and place the application on the priority list.
- (b) At least once each calendar year, the Board will adopt a revised priority list. The Board will place on a revised priority list only those eligible applications received at least 30 days prior to adoption of a revised list.
- (c) The Board will not incorporate into a revised priority list those applications from the previous priority list for which a grant agreement exists between the Board and the applicant.
- (d) Applications that are carried over from a previous priority list will retain their previous ranking on any revised priority list. New applications added to a revised priority list will be ranked below applications that are carried over from the previous priority list.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2825. General Procedures for Payment

- (a) After the Board issues a notice of eligibility to the applicant, the Board and the applicant shall enter into a grant agreement.

DRAFT

- (1) For assessment grants and cleanup grants, where the response actions are not performed in accordance with article 6.5 of chapter 6.75 of the Health and Safety Code, the applicant shall submit a proposed scope of work and budget for response actions that are the subject of the grant. The scope of work shall include a brief and quantified description of the tasks to be performed. The budget shall include the following information for each task: total amount, breakdown of the estimated number of hours, job classification and hourly rate of personnel performing the task, subcontractor charges and any other information reasonably required by the Board to finalize the scope of work and budget. For cleanup grants where the response actions are not performed in accordance with article 6.5 of chapter 6.75 of the Health and Safety Code, the applicant shall submit at least three responsive proposals or bids in accordance with section 2826.
- (2) For response actions that are performed in accordance with article 6.5 of chapter 6.75 of the Health and Safety Code, the applicant shall submit at least three responsive proposals or bids in accordance with section 25299.65 of the Health and Safety Code.
- (b) After the Board and the applicant enter into the grant agreement, the applicant may begin submitting payment requests. An applicant may submit payment requests on an on-going basis for eligible response action costs provided that the request is for \$5,000 or more.
- (c) Payment requests for assessment funds and cleanup funds, where the response actions are not conducted pursuant to article 6.5 of chapter 6.75 of the Health and Safety Code, must include invoices and auxiliary documentation that demonstrate to the Board's satisfaction that the response action costs claimed by an applicant are eligible. Invoices must include, at a minimum, all of the following:
 - (1) A brief description of the work performed;
 - (2) The date when the work was performed;
 - (3) The consultant's or contractor's name and address;
 - (4) The name or initials of the person performing the work;
 - (5) The job classification or title and hourly rate of the person performing the work;
 - (6) The hours charged for each task per day;
 - (7) The cost amount of the work performed;
- (d) Payment requests for cleanup funds where the response actions are conducted pursuant to article 6.5 of chapter 6.75 of the Health and Safety Code shall include:

DRAFT

- (1) A report detailing the attainment of a remediation milestone in accordance with article 6.5 of chapter 6.75 of the Health and Safety Code;
 - (2) A letter from the regulatory agency overseeing response actions that verifies that the remediation milestone has been attained;
 - (3) Invoices and auxiliary documentation that demonstrate that the costs of response actions claimed by the applicant are eligible for payment; and
 - (4) Any other information reasonably required by the Board to demonstrate that the performance-based contract is consistent with article 6.5 of chapter 6.75 of the Health and Safety Code.
- (e) Within 60 days of the receipt of a properly documented payment request, the Board will pay for eligible costs or inform the applicant of the Board's basis for rejecting the costs.
 - (f) Within 30 days of receipt of payment from the OSCA, an applicant must pay all reimbursed costs incurred by the applicant, but not yet paid. If an applicant has not paid such costs within 30 days, the applicant shall immediately return the unpaid funds to the Board.
 - (g) In the event of an overpayment of a claim, the applicant shall repay the overpayment to the Board within 20 days of request by the Board.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2826. Bidding Requirements

- (a) Applicants must follow applicable state laws and regulations in procuring consultant and contractor services and must ensure that those services are obtained from qualified independent consultants and contractors.
- (b) Except as provided in subdivision (c), for cleanup grants, applicants must obtain at least three written, competitive, responsive proposals or bids with detailed cost estimates that include unit prices and quantities for response actions contracted for on or after the effective date of this article, and to be performed by licensed contractors within the meaning of Business and Professions Code, division 3, chapter 9 (commencing with section 7000). Except as provided in subdivision (c), applicants must obtain at least three written proposals with detailed cost estimates that include unit prices and quantities for response actions contracted for on or after the effective date of this article, and to be performed by professional geologists within the meaning of Business and Professions Code, division 3, chapter 12.5 (commencing with section 7800) or by professional engineers within the meaning of Business and Professions

DRAFT

Code, division 3, chapter 7 (commencing with section 6700). The requisite bids or proposals must conform to the workplans and corrective action plans prepared pursuant to California Code of Regulations, title 23, division 3, chapter 16, article 11.

- (c) Applicants shall comply with the bidding process established in section 25299.65 of the Health and Safety Code for response actions performed pursuant to article 6.5 of chapter 6.75 of the Health and Safety Code.
- (d) Local governmental entities shall comply with applicable public contract requirements including the requirements of Public Contract Code, division 2, part 3 (commencing with section 20100).
- (e) Applicants are not required to submit proposals or bids when they initially file an application, but the Board will not normally enter into a grant agreement with applicants for any work for which multiple proposals or bids are required until the proposals or bids are submitted to the Board. The Board may waive the three-bid or -proposal requirement if the Board finds that the requirement is unnecessary, unreasonable, or impossible to comply with under the circumstances pertaining to a particular application.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2827. Effect of Placement on Priority List; Management of Priority List and Payments

- (a) Placement of an application on the priority list does not constitute a commitment to pay eligible costs claimed. That commitment occurs only when the Board and the applicant enter into a grant agreement.
- (b) Applications on the priority list generally will be processed and paid according to the ranking of the application on the priority list. However, to assure equitable, effective, and timely use and expenditure of available funds from the OSCA, the Board reserves the right at any time to:
 - (1) Modify the order of processing, payment and approval of applications; or
 - (2) Modify the ranking of applications in accordance subdivision (b) of section 2822;

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2828. Removal from the Priority List and Resubmission of Applications

- (a) An application that has been placed on the priority list may be removed if:

DRAFT

- (1) The applicant is not in compliance with any of the applicable requirements of this article, the California Code of Regulations, title 23, division 3, chapter 16, Health and Safety Code, division 20, chapter 6.7, or any provision of the Water Code under which the applicant is required to take response actions for an unauthorized release from an underground storage tank;
 - (2) The applicant fails to provide necessary documentation or information, or refuses to provide access to the eligible site that is the subject of the application to a regulatory agency; or
 - (3) The information submitted with the claim contains a material error.
- (b) An applicant may resubmit an application that has been removed from the priority list pursuant to subdivision (a) of this section if the applicant has corrected the condition that was the basis for the removal. An application that is resubmitted pursuant to this subdivision shall be treated as a new application, and if the Board determines that the applicant has corrected the condition that was the basis for removal, the application's priority ranking shall be based on the date when the Board makes its determination. An application may not be resubmitted to the Board if the information presented about the application contains a material error that was a result of misrepresentation or fraud or other misconduct on the part of the applicant.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2829. Verification of Applications

Applicants shall verify under penalty of perjury that all statements, documents and certifications contained in or accompanying an application are true and correct to the best of the applicant's knowledge. This shall include all statements and documents submitted during the active life of the application. If an applicant discovers information that creates a material error in any statement, document or certification previously submitted by the applicant, the applicant shall submit the new information to the Board within twenty (20) days of discovering the new information.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2830. Intentional or Reckless Acts; Disqualification of Applications

- (a) Notwithstanding any other provision of this article, response costs that result from the gross negligence or the intentional or reckless acts of the applicant or an agent, servant, employee or representative of the applicant, are not eligible for funding from the OSCA.

DRAFT

- (b) The Board may disqualify an application and may bar the application and any other application submitted by the applicant from further participation in the OSCA at any time if it is found that any application submitted by the applicant contains a material error that was a result of misrepresentation, fraud or other misconduct on the part of the applicant.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2831. Overpayment; Repayment

- (a) An applicant that obtains payment from the OSCA as a result of a material error in the application or another submitted document shall repay to the Board the amount of funds paid to the applicant.
- (b) Any payment made to the applicant to which applicant is not entitled must be repaid to the Board immediately upon knowledge or notice that such a payment has been made and, in any event, not later than twenty (20) days after a written request for repayment by the Board.
- (c) Money repaid to the Board pursuant to this section shall be deposited in the OSCA established by Health and Safety Code section 25299.50.2.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

2832. Appeals

If the Board denies the application, the applicant shall have no right to administratively appeal the decision, but may reapply at any time. An applicant may not reapply if the previously-denied application or any other information submitted to the Board by the applicant contained a material error that was a result of misrepresentation or fraud or other misconduct.

Authority: Section 25299.77, Health and Safety Code
Reference: Section 25299.50.2, Health and Safety Code

9/9/05 1:59